

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

JENNALEE K. NELSON,

Appellant,

v.

Case No. 5D21-2469
LT Case No. 2021-DR-11065-0

JACOB MIRRA,

Appellee.

Opinion filed March 21, 2022

Appeal from the Circuit Court
for Orange County,
Joshua A. Mize, Judge.

Jill W. Warren, Pensacola, for Appellant.

Laura Davis Smith and Sonja A. Jean, of
Davis Smith & Jean, LLC, Coral Gables,
for Appellee.

TRAVER, J.

Jennalee K. Nelson (“Mother”) appeals the trial court’s denial of her
emergency verified motion for child pick-up order. We reverse because the

paternity status of Jacob Mirra (“Father”) did not give him co-equal custody rights without a prior court order awarding him these rights.

In September 2021, Mother filed an emergency verified petition, requesting the trial court order law enforcement to pick up her then-twenty-month-old daughter from Father. The parties agree that Mother attached a copy of the child’s birth certificate to her petition, and it had Father’s name on it. Mother alleged, however, that she was not married to Father, and Father’s paternity had not been established. She contended that Father had withheld the child from her for a month, and that his behavior was “erratic, manipulative, and threatening.” She also expressed concern about Father’s history of alcoholism. Mother “believed” the child was living with Father in New Jersey.

The trial court summarily denied the emergency petition. It ruled that Father “is on the child’s birth certificate and is therefore the child’s legal father. [Father] has an equal right to custody of the child as [Mother].” It invited either party to file a petition to establish timesharing.

We review de novo the trial court’s summary denial of an emergency petition for child pick-up order. See *generally In re T.J.*, 59 So. 3d 1187, 1188 (Fla. 3d DCA 2011). Mother now acknowledges that Father’s paternity had been established when she filed her emergency motion. But she

contends the trial court should not have awarded Father custody without a prior court order establishing it. Father does not dispute that his paternity status alone does not grant him custody rights, but he contends we should nevertheless affirm¹ because the trial court lacked Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”) jurisdiction over the parties’ child.

Both parties are correct that the trial court erred by conflating the Father’s paternity status with his custody rights. Paternity describes “[t]he quality, state, or condition of being a father, esp[ecially] a biological one.” *Paternity*, *Black’s Law Dictionary* (11th ed. 2019). Florida law outlines a variety of ways for the father of a child born out of wedlock to establish paternity. See § 742.10(1), Fla. Stat. (2021). Here, the trial court correctly identified one of these situations: an unmarried father’s voluntary acknowledgement of paternity. *Id.*; § 382.013(2)(c), Fla. Stat. (2021). Following this acknowledgement, the unmarried father’s name is added to the child’s birth certificate, and a rebuttable presumption arises that he is the

¹ See *Butler v. Yusem*, 44 So. 3d 102, 105 (Fla. 2010) (“Under the tipsy coachman doctrine, where the trial court ‘reaches the right result, but for the wrong reasons,’ an appellate court can affirm the decision only if ‘there is any theory or principle of law *in the record* which would support the ruling.’” (quoting *Dade Cnty. Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644 (Fla. 1999))).

child's legal father. §§ 742.10(1), 90.304, Fla. Stat. (2021). If neither parent rescinds the acknowledgement or files a judicial action relating to the child within sixty days, the voluntary acknowledgement establishes paternity subject to exceptions² that are inapplicable here. *Id.* § 742.10(4). In this case, the parties agree that Father signed a voluntary acknowledgement of paternity, and sixty days passed without rescission or judicial action. Father is therefore the child's legal father.³

In this context, however, Father's paternity alone does not grant him child custody. See § 744.301(1), Fla. Stat. (2021). The Florida Legislature has granted "primary residential care and custody" of a child born out of wedlock to the child's mother "unless the court enters an order stating otherwise." *Id.* § 744.301(1). Custody refers to "[t]he care or control of a . . . person . . . for . . . preservation, or security." *Custody, Black's Law Dictionary* (11th ed. 2019); see also 23 Fla. Prac., Fla. Family Law § 7.6 (June 2021)

² See, e.g., §§ 742.10(4) (fraud, duress, or material mistake of fact), 742.18(1) (disestablishment of paternity), Fla. Stat. (2021).

³ Mother filed an affidavit under the UCCJEA with her petition, showing the child was born in Mississippi, lived in Orlando from June to August 2021, and then moved to New Jersey in August 2021. She swore that a Mississippi court had issued a "court order or judgment" involving the child in September 2021, right before she filed her Florida petition. Because Florida and Mississippi have equivalent procedures for purposes of this case, paternity is established in both states. See Miss. Code Ann. § 41-57-23(3) (2021); § 742.105, Fla. Stat. (2021).

(“Custody is the general term for the responsibility for the safety, health, and welfare of a minor child, accompanied by the authority necessary to meet those obligations.”).

An emergency pick-up order “permits a court to obtain the physical presence of a child within the jurisdiction so that it can adjudicate issues of custody or to enforce an already granted right of custody. It is not a vehicle by which an initial determination of custody is made.” *Williams v. Primerano*, 973 So. 2d 645, 647 (Fla. 4th DCA 2008). Father’s paternity status did not afford him custody rights when a court order had not yet established them. See § 744.301(1); *Perez v. Giledes*, 912 So. 2d 32, 33 (Fla. 4th DCA 2005) (“The fact that [the father] has enforceable rights and obligations by virtue of his acknowledgement of paternity does not equate to his having a right to temporary custody superior to the mother’s prior to a court declaration to that effect.”). The trial court declared that Father and Mother had equal custody rights over their child. In the absence of a prior court order addressing custody, this was error. See § 744.301(1).

Accordingly, Mother asks for us to reverse and remand with directions to grant the emergency pick-up order. Despite Father’s acknowledgment that his paternity status did not grant him custody rights, he nonetheless requests that we affirm because the trial court lacked jurisdiction under the

UCCJEA to address this dispute. Although Father raises relevant questions about the trial court's UCCJEA jurisdiction, our limited record does not allow for affirmance on these grounds. Accordingly, we remand for an evidentiary hearing on Mother's emergency petition. The trial court should take appropriate steps to expedite this hearing.

REVERSED and REMANDED with DIRECTIONS.

WALLIS and NARDELLA, JJ., concur.